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11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO DIVISION**

14 TIMOTHY TAYLOR,

15 Plaintiff,

16 v.

17  
18 STANDARD INSURANCE  
19 COMPANY, an Oregon corporation, in  
20 its capacity as fiduciary and insuring  
21 administrator of the L-1 Identity  
22 Solutions, Inc. Long Term Disability  
23 Plan, an ERISA-regulated welfare plan;  
24 and STUART ALLEN &  
ASSOCIATES, INC., an Arizona  
corporation,

25 Defendants.

Case No.:

COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF UNDER THE  
EMPLOYEE RETIREMENT  
INCOME SECURITY ACT OF 1974  
("ERISA"), AND FOR

DAMAGES FOR VIOLATIONS OF  
THE FAIR DEBT COLLECTION  
PRACTICES ACT, AND

DEMAND FOR **TRIAL BY JURY**

1 Now comes the Plaintiff Timothy Taylor (hereinafter “Plaintiff” or “Mr.  
2 Taylor”), who alleges as follows:

3 **JURISDICTION**

4 1. Jurisdiction of this Court is based on the Employee Retirement  
5 Income Security Act of 1974, as amended (“ERISA”), and in particular, ERISA §§  
6 502(e), 29 U.S.C. §§ 1132(e). In addition, this Court has jurisdiction pursuant to  
7 28 U.S.C. § 1331, which gives the district courts jurisdiction over actions that arise  
8 under the laws of the United States.

9 **VENUE**

10 2. Venue is proper under ERISA § 502(e)(2), 29 U.S.C. §1132(e)(2), in  
11 that the employee benefit plan that is the subject of this action is administered  
12 within this District, some or all of the breaches described below occurred within  
13 the territorial limits of this District, and/or the defendants may be found within the  
14 territorial limits of this District.

15 **PARTIES**

16 3. Plaintiff TIMOTHY TAYLOR was a participant and beneficiary,  
17 within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), in the L-1 Identity  
18 Solutions Inc. Group Long Term Disability Plan (the “Plan”). At all times relevant  
19 hereto, Plaintiff resided in Concord, Contra Costa County, California. Plaintiff  
20 currently resides in Jackson County, Oregon.

21 4. Defendant STANDARD INSURANCE COMPANY  
22 (“STANDARD”), is and at all times relevant hereto was a corporation formed  
23 under the laws of the state of Oregon, with its principal place of business in the  
24 state of Oregon, and is and at all times relevant hereto was an insurance company  
25 licenses by the California Department of Insurance to conduct business in the state  
26 of California. STANDARD is and at all times relevant hereto was, the claims  
27  
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1 administrator, insurer, a party in interest within the meaning of ERISA § 3(14), 29  
2 U.S.C. § 1002(14), and a fiduciary within the meaning of ERISA §§ 3(16) and  
3 3(21), 29 U.S.C. §§ 1002(16).

4 5. Defendant STUART ALLEN & ASSOCIATES, INC. (“SAA”), is a  
5 corporation formed under the laws of the state of Arizona, with its principal place  
6 of business in Tucson, Arizona, is and at all times relevant hereto was registered  
7 with the California Secretary of State, regularly conducts business in the state of  
8 California, and is a “debt collector” within the meaning of the Fair Debt Collection  
9 Practices Act “(FDCPA)”, 15 U.S.C. § 1692a(g), and California Civil Code §  
10 1788.2(c). In committing the acts herein alleged, SAA is and was at all times  
11 acting on behalf of and as the agent of STANDARD. As such, SAA is and was a  
12 party in interest within the meaning of ERISA § 3(14)(B), 29 U.S.C. §  
13 1002(14)(B).

#### 14 **FACTUAL ALLEGATIONS**

15 6. From October 2007 to December 2012, Plaintiff was employed by L-1  
16 Identity Solutions, Inc., and was covered by the Plan. On or about August 3, 2010  
17 Plaintiff was riding his bicycle when a car struck him. His injuries were  
18 catastrophic, and he was hospitalized for ten weeks. As a result of the profound  
19 physical and cognitive impairments he suffered following the accident, Plaintiff  
20 was no longer able to work full time. STANDARD, as a fiduciary and as the  
21 insurer of the Plan, found him eligible for, and paid him, Long Term Disability  
22 (“LTD”) benefits from approximately November 2, 2010 until February 1, 2012.  
23 In determining Plaintiff’s pre-disability earnings for purposes of calculating his  
24 LTD benefit, STANDARD incorrectly failed to include regular bonuses that  
25 Plaintiff had received from his employer. During his period of disability, Plaintiff  
26 received additional bonuses from his employer. All of the LTD benefits that  
27

1 Plaintiff received from Standard as well as substantial portions of the bonuses were  
2 spent by Plaintiff when received in order to provide for his needs and his family's  
3 needs.

4 7. Subsequently, STANDARD informed Plaintiff that, as a result of the  
5 post-disability bonuses that Plaintiff had received, it claimed a right to recover  
6 approximately \$81,000 in LTD benefits that it alleged it had overpaid. Plaintiff  
7 challenged STANDARD's self-serving selective recognition of his bonuses.  
8 Plaintiff further argued that, under the Ninth Circuit's decision in *Bilyeau v.*  
9 *Morgan Stanley Long Term Disability Plan*, 683 F.3d 1083 (9th Cir. 2012), *cert.*  
10 *den.* 133 S. Ct. 1242 (2013), no cognizable claim exists that allows STANDARD  
11 to recoup the alleged overpayment. In this connection, Plaintiff exhausted  
12 STANDARD's administrative appeal process.

13 8. On February 28, 2013, as part of the above-alleged administrative  
14 process, Plaintiff's counsel informed the STANDARD by letter that Plaintiff was  
15 represented by counsel and should be contacted only via counsel. The letter  
16 contained a specific request that notice of the representation should be provided to  
17 any and all debt collectors that STANDARD might retain in connection with the  
18 alleged overpayment. On or about April 2, 2013, by letter, STANDARD  
19 acknowledged receipt of the letter, acknowledged that Plaintiff was represented by  
20 counsel, and acknowledged the request.

21 9. On May 31, 2013, STANDARD sent counsel a letter denying  
22 PLAINTIFF's administrative appeal of the alleged overpayment claim, which  
23 letter explicitly acknowledged Plaintiff's citation to *Bilyeu, supra*, but failed to  
24 offer any explanation or reasoning why the case did not apply to STANDARD's  
25 collection efforts against Plaintiff. On August 12, 2013, STANDARD called  
26 counsel to say that the matter would be sent to collections if not paid, and  
27

1 Plaintiff's attorney again instructed the STANDARD by phone that any and all  
2 debt collectors should contact only Plaintiff's counsel.

3 10. On August 21, 2013, defendant SAA sent a collection letter to  
4 directly to the Plaintiff at his home in Oregon, purporting to act on behalf of  
5 STANDARD and seeking to collect an alleged \$81,000 LTD overpayment. At the  
6 time it sent that letter, SSA knew or should have known that Plaintiff was  
7 represented by counsel.

8 11. On August 23, 2013, defendant SAA contacted Plaintiff's attorney by  
9 telephone, and in said call threatened to disregard the fact that Plaintiff was  
10 represented by counsel, threatened to contact Plaintiff directly, further threatened  
11 that "bad things" would happen if the purported debt were not paid promptly,  
12 specifically threatened to ruin Plaintiff's credit report, and specifically threatened  
13 to pursue a civil action against the Plaintiff.

14 12. On August 23, 2013, Plaintiff's attorney responded to SAA's call with  
15 a letter delivered by both facsimile and U.S. Mail. The letter re-identified  
16 Plaintiff's counsel, stated that the debt was disputed, and demanded written  
17 validation of the debt.

18 13. Thirty days later, on September 23, 2013, SSA sent counsel an e-mail  
19 purporting to constitute the debt validation. To the email was attached a copy of  
20 STANDARD's May 31, 2013 letter. Counsel requested that the validation be  
21 delivered by U.S. Mail, and SSA refused. In a subsequent email also sent on  
22 September 23, 2013, SSA demanded settlement of the purported debt for 66% of  
23 the total alleged amount, and threatened a lawsuit if Plaintiff did not pay such  
24 amount in full within seven days.

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**FIRST CAUSE OF ACTION**

**Declaratory and Injunctive Relief under ERISA § 502(a)(3)  
(against all defendants)**

14. Plaintiff realleges and incorporates by reference all allegations contained in the foregoing paragraphs as if fully stated herein.

15. ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), requires fiduciaries to discharge their duties solely in the interests of employee benefit plan participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the plan.

16. ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B), requires fiduciaries to discharge their duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

17. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D), requires fiduciaries to discharge their duties in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of ERISA.

18. ERISA § 502(a)(1), 29 U.S.C. § 1132(a)(1) allows a participant or beneficiary to bring suit to obtain declaratory relief to “clarify his rights to future benefits” under the terms of a plan. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3) allows a participant or beneficiary to bring an action to “enjoin any act or practice which violates any provision of this title or the terms of a plan, or [] to obtain other appropriate relief (i) to redress such violations or (ii) to enforce any provision of this title or the terms o the plan.”

19. A real and actual dispute has arisen between Plaintiff and the Defendants as to whether a debt is owed by Plaintiff to either of them.

1 STANDARD, on its own behalf and through SSA, asserts that (a) it overpaid  
 2 Plaintiff's LTD benefits in the amount of approximately \$81,000, and (b) that it  
 3 has a legally cognizable claim to collect said funds from Plaintiff in a civil action  
 4 under the terms of the Plan. Plaintiff, by contrast, contends that STANDARD  
 5 incorrectly calculated his LTD benefits in the first instance, wherefore there was  
 6 never an overpayment of benefits, and further, even if there had been an  
 7 overpayment, the Ninth Circuit's decision in *Bilyeu, supra*, makes clear that there  
 8 is no cognizable claim under ERISA by which STANDARD may recoup such  
 9 overpayment of benefits.

10 20. By attempting to collect the alleged overpayment, by sending it  
 11 collections, by threatening to ruin Plaintiff's credit, and by threatening to pursue  
 12 civil litigation, STANDARD is breaching its fiduciary duties under ERISA, is  
 13 violating the terms of the Plan, and is violating ERISA.

14 21. Wherefore, Plaintiff prays for a declaratory judgment adjudicating  
 15 that STANDARD and SAA have no claim against him, and for his attorneys fees  
 16 and costs incurred herein, pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g), in an  
 17 amount to be established at or after trial.

18 22. Wherefore, Plaintiff further prays for injunctive relief in the form of  
 19 an order directing Defendants to cease and desist all collection efforts of any and  
 20 every kind whatsoever related to their claim that Plaintiff must repay  
 21 approximately \$81,000 in alleged overpaid LTD benefits.

## 22 **SECOND CAUSE OF ACTION**

### 23 **Violations of the FDCPA** 24 **(against all defendants)**

25 23. Plaintiff realleges and incorporates by reference all allegations  
 26 contained in the foregoing paragraphs as if fully stated herein.

27 24. The FDCPA, 15 U.S.C. § 1692g requires that, no later than  
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1 thirty days following written notice that a debtor disputes a debt, the debt collector  
2 shall provide the debtor with written validation via U.S. Mail, and shall cease all  
3 collection activities until doing so.

4 25. The FDCPA, 15 U.S.C. § 1692b(6) and 1692c(a) prohibit debt  
5 collectors from contacting a debtor when the debt collector knows or should know  
6 that the debtor is represented by an attorney.

7 26. The FDCPA, 15 U.S.C. § 1692d prohibits debt collectors from  
8 engaging in harassing, oppressive, or abusive conduct.

9 27. The FDCPA, 15 U.S.C. § 1692e prohibits debt collectors from  
10 using “false, deceptive, or misleading representation or means in connection with  
11 the collection of any debt.”

12 28. The FDCPA, 15 U.S.C. § 1692f prohibits debt collectors from  
13 using “unfair or unconscionable means to collect or attempt to collect any debt.”

14 29. By committing the acts alleged herein, SSA has violated each  
15 of these sections of the FDCPA. Specifically, and without limitation,

- 16 (a) by refusing and failing to provide debt validation by U.S. Mail within  
17 30 days of the written request, and by engaging in collection activities  
18 in the form of a settlement demand prior to providing such validation,  
19 SAA violated § 1692g;
- 20 (b) by sending a collection letter directly to the Plaintiff when it knew that  
21 he was represented by counsel SAA violated §§ 1692b and 1692c;
- 22 (c) by threatening that “bad things” would happen and threatening to sue  
23 Plaintiff and ruin his credit, SSA violated § 1692d;
- 24 (d) by threatening to make damaging credit reports and to pursue legal  
25 action on a debt that is not legally cognizable, SAA violated §§ 1692e  
26 and 1692f.
- 27



Plaintiff is informed and believes and thereon alleges that SAA failed to institute measures designed to prevent the commission of these violations, and that none of the violations was the product of a bona fide error. Defendant SAA committed these violations in its capacity as a representative and agent of STANDARD, which bears *respondeat superior* liability for SAA's unlawful conduct.

30. Wherefore, Plaintiff prays for relief in the form of actual damages, statutory damages, attorney's fees and costs, in amounts to be proven at trial, as set forth below.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief against all defendants:

- A. For appropriate relief pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), including but not limited to declaratory and injunctive relief in the form of an order holding that the Defendants hold no cognizable debt that they can collect from the Plaintiff, and enjoining the Defendants from taking any collection activities or making any credit reports regarding same;
- B. For appropriate equitable relief pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), including but not limited to an order equitably estopping Defendants from refusing to enroll Plaintiff as a participant in the Plan, affirmative injunctive relief in the form of an order requiring Plaintiff's enrollment as a participant in the Plan, and a surcharge against the Plan and or its administrators for any pecuniary injuries suffered by Plaintiff as a result of Defendants' fiduciary breaches;
- C. For statutory damages under the FDCPA, 15 U.S.C. § 1692k(a)(2), in the amount of \$1,000 per discreet violation;
- D. For actual damages under the FDCPA, 15 U.S.C. § 1692k(a)(1), in an amount to be proven at trial;

- 1 E. For reasonable attorney's fees and costs incurred by Plaintiff in the  
2 prosecution of this action pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g);  
3 F. For reasonable attorney's fees and costs incurred by Plaintiff in the  
4 prosecution of this action pursuant to the FDCPA, 15 U.S.C. § 1692k(a)(3);  
5 G. For all such other and further relief as the Court deems appropriate.  
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7 **JURY DEMAND**

8 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff  
9 demands a trial by jury in this action of all issues so triable.  
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11 DATED: Sept. 27, 2013

**Creitz &  
Serebin** LLP

13 /s/ Joseph A. Creitz

14 Joseph A. Creitz, Attorneys for  
15 Plaintiff Timothy Taylor  
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